

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

(Attorney Docket No. 03-380-D)

In re the Application of:)	
)	
Rosenberg et al.)	
)	
Serial No.: 09/978,170)	Examiner: Jean D. Janvier
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Filed: October 15, 2001)	
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Confirmation No.: 3931)	Group Art Unit: 3688
)	
For: Method and System for Pause Ads)	

APPEAL BRIEF

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPEAL BRIEF

Dear Sir:

This Appeal Brief is submitted pursuant to 37 C.F.R. § 41.37, within one month of December 15, 2008, the mailing date of the Notice of Panel Decision from Pre-Appeal Brief Review. The Patent Office is authorized to charge the large entity Appeal Brief fee (\$540.00) to Deposit Account 132490 and is generally authorized to charge an underpayment or credit any overpayment in this matter to the same deposit account. The Patent Office is further authorized to treat any communication submitted for this application that requires an extension of time as incorporating a request for such an extension.

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I. Real party in interest

The real party in interest is The DirecTV Group, Inc. to which the claimed invention is assigned.

II. Related appeals and interferences

Applicant is not aware of any related appeals or interferences.

III. Status of claims

Claims 1, 2, 5-11, 13-18, 20, and 22-28 are currently pending and have been rejected under 35 U.S.C. § 103(a). The rejection of claims 1, 2, 5-11, 13-18, 20, and 22-28 is being appealed. Claims 3, 4, 12, 19, 21 have been cancelled.

IV. Status of amendments

No amendments have been filed since the final rejection was mailed on August 6, 2008.

V. Summary of claimed subject matter

Of the pending claims, claims 1 and 20 are independent. Claim 1 provides for a method that includes the functions: obtaining an ad, and while user selected program content stored at a storage medium of a video replay system is being displayed on a display of the video replay system, entering a pause mode in response to a user action that comprises pressing a pause key. The method of claim 1 also includes the functions: upon entering the pause mode, pausing the user selected program content and displaying the paused user selected program content on the display of the video replay system during a time delay greater than zero seconds, and after the time delay has elapsed, displaying the ad on the display of the video replay system. Claim 20 provides for a computer program product that has computer instructions stored thereon to cause a video replay system to perform a method that includes the fore mentioned functions of claim 1.

a. Claim 1

Independent claim 1 recites a method of displaying an ad on a video replay system (*see*, specification, page 3, lines 11-13 and lines 22-24), the method comprising:

on a display of the video replay system (*see*, e.g., Figure 1(a), reference character 106; Figure 2, reference characters 106, 200), displaying user selected program content stored at a storage medium of the video replay system (*see*, e.g., specification, page 3, lines 24-29);

while the user selected program content is being displayed on the display of the video replay system (*see*, e.g., specification, page 3, lines 24-29), entering a pause mode in response to a user action that comprises pressing a pause key (*see*, e.g., specification, page 21, lines 15-16);

obtaining an ad (*see*, e.g., specification, page 21, lines 18-21); and

upon entering the pause mode, pausing the user selected program content and displaying the paused user selected program content on the display of the video replay system during a time delay greater than zero seconds (*see*, e.g., specification, page 10, lines 17-24; Figure 10, reference characters 1002, 1008, 1010); and

after the time delay has elapsed, displaying the ad on the display of the video replay system (*see*, e.g., specification, page 10, lines 17-24; Figure 10, reference characters 1002, 1008, 1010).

b. Claim 20

Independent claim 20 recites a computer program product, having computer instructions stored thereon to cause a video replay system to perform a method comprising (*see*, e.g., specification, page 4, lines 14-15; page 7, lines 23-24; page 8, lines 17-19):

on a display of the video replay system (*see*, e.g., Figure 1(a), reference character 106; Figure 2, reference characters 106, 200), displaying user selected program content stored at a storage medium of the video replay system (*see*, e.g., specification, page 3, lines 24-29);

while the user selected program content is being displayed on the display of the video replay system (*see*, e.g., specification, page 3, lines 24-29), entering a pause mode in response to a user action that comprises pressing a pause key (*see*, e.g., specification, page 21, lines 15-16);

obtaining an ad (*see*, e.g., specification, page 21, lines 18-21); and

upon entering the pause mode, pausing the user selected program content and displaying the paused user selected program content on the display of the video replay system during a time delay greater than zero seconds (*see*, e.g., specification, page 10, lines 17-24; Figure 10, reference characters 1002, 1008, 1010); and

after the time delay has elapsed, displaying the ad on the display of the video replay system (*see*, e.g., specification, page 10, lines 17-24; Figure 10, reference characters 1002, 1008, 1010).

VI. Grounds of rejection to be reviewed on appeal

a. Claims 1 and 20

On page 2 of the final rejection, the Examiner indicated that independent claims 1 and 20 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,740,549 (Reilly). However, as far as Applicant can tell, the Examiner actually rejected claims 1 and 20 under 35 U.S.C. § 103(a) as being obvious over Reilly and the Official Notice taken by the Examiner in the final rejection at page 7, third and fourth paragraphs. For purposes of this Appeal Brief, Applicant refers to this portion of Official Notice as “the First Official Notice.”

b. Claims 22-24

On page 2 of the final rejection, the Examiner indicated that dependent claims 22-24 were rejected under 35 U.S.C. § 103(a) as being obvious over Reilly. However, as far as Applicant can tell, the Examiner actually rejected claims 22-24 under 35 U.S.C. § 103(a) as being obvious over Reilly and the First Official Notice.

c. Claims 25 and 28

On page 2 of the final rejection, the Examiner indicated that dependent claims 25 and 28 were rejected under 35 U.S.C. § 103(a) as being obvious over Reilly. However, as far as Applicant can tell, the Examiner actually rejected claims 25 and 28 under 35 U.S.C. § 103(a) as being obvious over Reilly and the Official Notice taken by the Examiner in the final rejection at page 9, second paragraph. *See*, final rejection, page 9, first three paragraphs. For purposes of this Appeal Brief, Applicant refers to the Official Notice recited in the final rejection at page 9, second paragraph, as “the Second Official Notice.”

d. Claims 26 and 27

On page 2 of the final rejection, the Examiner indicated that dependent claims 26 and 27 were rejected under 35 U.S.C. § 103(a) as being obvious over Reilly. However, as far as Applicant can tell, the Examiner actually rejected claims 26 and 27 under 35 U.S.C. § 103(a) as being obvious over Reilly and the Official Notice taken by the Examiner in the final rejection at page 10, second paragraph. *See*, final rejection, page 9, last paragraph, and page 10. For purposes of this Appeal Brief, Applicant refers to the Official Notice recited in the final rejection at page 10, second paragraph, as “the Third Official Notice.”

e. Claims 2, 5-11, and 13-18

On page 2 of the final rejection, the Examiner indicated that dependent claims 2, 5-11 and 13-18 were rejected under 35 U.S.C. § 103(a) as being obvious over Reilly.

VII. Argument

M.P.E.P. § 2142 states, *inter alia*, “The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that ‘rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’ *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).”

M.P.E.P. § 2141.02 states, *inter alia*, “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” (Emphasis original).

Applicant submits that the Examiner has not established *prima facie* obviousness of the pending claims, and that the pending claims should therefore be allowed.

- a. **The Examiner clearly erred in rejecting claims 1 and 20 as being obvious over Reilly and the First Official Notice**
- i) **The Examiner erred in rejecting claims 1 and 20 because the Examiner did not clearly articulate the reasons why the claimed invention would have been obvious at the time of the invention**

On page 2 of the final rejection, the Examiner indicated that independent claims 1 and 20 were rejected under 35 U.S.C. § 103(a) as being obvious over Reilly. Then on page 7 of the final rejection, the Examiner stated, "As per claims 1, 20 and 22-24, although Reilly discloses a system wherein a user or subscriber controls the display of content that is presented during a pause mode or idle mode by setting the timing delay period required before the system enters the pause mode, however, Reilly does not expressly teach pressing a pause key, displayed on a screen (video replay system) to thereby trigger the pause mode." The Examiner took official notice (i.e., the First Official Notice) to make up for this deficiency of Reilly. Thus, as far as Applicant can tell, the Examiner actually rejected claims 1 and 20, as well as claims 22-24, under 35 U.S.C. § 103(a) as being obvious over Reilly and the First Official Notice.

Furthermore, in the final rejection, from page 2, last paragraph, to page 7, second paragraph, the Examiner discusses Reilly as it applies to claims 1, 2, 5-11, 13-18, 20, 22-25, and 26-28. In the final rejection, page 7, third and fourth paragraphs, the First Official Notice is recited. And on page 8 of the final rejection, the Examiner discusses incorporating the First Official Notice into Reilly's system.

Throughout these portions of the final rejection, although the Examiner refers to various portions of each limitation of claims 1 and 20, Applicant submits that the Examiner did not address the entirety of each and every limitation of claims 1 and 20, and thus the Examiner did not clearly articulate the reasons why claims 1 and 20 are obvious over Reilly and the First

Official Notice. At a minimum, for example, the Examiner did not address the entirety of the limitation “upon entering the pause mode, pausing the user selected program content and displaying the paused user selected program content on the display of the video replay system during a time delay greater than zero seconds.”

For at least these reasons, Applicant submits that the Examiner did not clearly articulate the reasons why claims 1 and 20 are obvious over Reilly, or in the alternative, over Reilly and the First Official Notice.

- ii) **The Examiner erred in rejecting claims 1 and 20 because the “news items” disclosed by Reilly do not amount to user selected program content that is displayed on a display of a video replay system upon entering the pause mode and during a time delay greater than zero seconds**

Claims 1 and 20 recite the functions: (i) on a display of the video replay system, displaying *user selected program content* stored at a storage medium of the video replay system, (ii) while the *user selected program content* is being displayed on the display of the video replay system, entering a pause mode in response to a user action that comprises pressing a pause key, (iii) obtaining an ad, (iv) upon entering the pause mode, pausing the *user selected program content* and displaying the paused *user selected program content* on the display of the video replay system during a time delay greater than zero seconds, and (v) after the time delay has elapsed, displaying the ad on the display of the video replay system. (Emphasis added).

Considering claims 1 and 20 in their entirety, the user selected program content that is displayed on the display of the video replay system when the pause mode is entered in response to the user action that comprises pressing a pause key is the user selected program content that is paused upon entering the pause mode. Upon entering the pause mode, this paused user selected program content is displayed on the display of the video replay system during a time delay greater than zero seconds.

In rejecting claims 1 and 20, the Examiner asserted that the “news items” disclosed by Reilly at column 11, line 41, amount to “paused content.” *See*, final rejection, page 5, first paragraph, lines 1-2. The Examiner also asserted that a predefined idleness criteria (pause conditions) could be the failure to receive any input for a period of at least five minutes, greater than zero seconds (*entering a pause mode* in response to a user action, which includes the action or inaction of not issuing any input to the computer to thereby *trigger* the display of selected program content and advertisements during an idle time or pause mode). *See*, final rejection, page 3, third paragraph, line 3 to page 4, first paragraph, line 3, emphasis added. Applicant submits that the “news items” disclosed by Reilly do not amount to the “user selected program content” or the “paused user selected program content,” as recited in claims 1 and 20.

Reilly, at best, discloses whenever the system detects a lack of user inputs via either a keyboard or a pointer device (e.g., a mouse or trackball) for a user configurable or otherwise specified length of time (e.g., 5 minutes), screen saver procedures *begin the display of news items* and advertisements from a local information database. *See*, Reilly, column 11, lines 43-49, emphasis added. But even if it is assumed, for the sake of argument, that the predefined idleness criteria (i.e., the failure to receive any input for a period of at least five minutes) amounts to entering a pause mode, since Reilly merely discloses that the screen saver procedures *begin* the display of the news items (i.e., paused content, according to the Examiner), Reilly does not disclose or suggest that the “news items” are being displayed when the pause mode is entered.

Furthermore, in rejecting claims 1 and 20, as far as Applicant can tell, the Examiner argued that Reilly’s disclosure of displaying the news items and advertisements using a first display script for 30 seconds and then displaying news items and advertisements using a second display script for 30 seconds amounts to “displaying the paused user selected program content on

the display of the video replay system during a time delay greater than zero seconds.” *See*, final rejection, page 5, first paragraph, and Reilly, col. 11, lines 53-67.

For the reasons discussed above, the “news items” disclosed by Reilly do not amount to the claimed “paused user selected program content.” Additionally, Reilly does not teach or suggest that the advertisements displayed via the first or second display scripts are displayed on the display while entering a pause mode, nor that the advertisements are paused. Therefore, Applicant submits that the advertisements disclosed by Reilly do not amount to the claimed “paused user selected program content,” and that Reilly’s disclosure of displaying news items and advertisements using a first display script for 30 seconds and then displaying news items and advertisements using a second display script for 30 seconds does not amount to “displaying the paused user selected program content on the display of the video replay system during a time delay greater than zero seconds,” as recited in claims 1 and 20.

Since the “news items” of Reilly do not amount to the claimed “user selected program content” or the claimed “paused user selected program content,” Applicant submits that displaying the “news items,” as disclosed by Reilly and/or the First Official Notice, does not amount to, “upon entering the pause mode, pausing the user selected program content and displaying the paused user selected program content on the display of the video replay system during a time delay greater than zero seconds,” as recited in claims 1 and 20.

- iii) The Examiner erred in rejecting claims 1 and 20 because the “work being done or in progress, such as typing a letter using MSWord or creating or reviewing a PowerPoint presentation,” as discussed by the Examiner, does not amount to user selected program content that is displayed on a display of a video replay system upon entering the pause mode and during a time delay greater than zero seconds**

In the final rejection, the Examiner asserted that “work being done or in progress, such as typing a letter using MSWord or creating or reviewing a PowerPoint presentation” amounts to user selected program content. *See*, final rejection, page 6, second paragraph.

In the advisory action mailed October 8, 2008, the Examiner argued that Reilly teaches the “paused selected program content.” In support of this argument, the Examiner stated, “Here, the system enters a screensaver mode to display advertising content, for example, when the user’s computer or system meets an idle criterion or timing condition due [to] a lack of browsing or keyboard activity. In any screensaver system, the work the user was doing, the document he was reading, the text he was typing, etc., before the computer enters this screensaver mode represents the user’s selected content that is being paused or momentarily suspended. That is the scenario in any conventional screensaver system.”

However, even if it is assumed, for the sake of argument, that the work the user was doing, the document he was reading, the text he was typing, etc., is displayed on a display before the computer enters the screensaver mode, Applicant submits that with a conventional screensaver system, upon entering the screensaver mode, any images that were being displayed before the computer enters the screensaver mode (e.g., the work the user was doing, the document he was reading, the text he was typing, etc.) is replaced immediately with the screensaver image (e.g., the news articles or advertisements of Reilly). Thus, with a conventional screensaver system and/or the screensaver system of Reilly, Applicant submits that,

upon entering the screen saver mode, the images being displayed before the computer enters the screensaver mode (i.e., the work the user was doing, the document he was reading, the text he was typing, etc.) are not displayed for a time period greater than zero seconds. Rather, upon entering the screensaver mode, the screen saver images are displayed.

Thus, even if it is assumed, for the sake of argument, that entering the screensaver mode of a conventional screensaver system amounts to “entering a pause mode,” Applicant submits that the Examiner has erred in asserting that Reilly, the First Official Notice, and/or a conventional screensaver system lead to, upon entering the pause mode, pausing the user selected program content and displaying the paused user selected program content on the display of the video replay system during a time delay greater than zero seconds, as recited in claims 1 and 20.

Furthermore, Reilly and the First Official Notice disclose that pressing an icon (pause key) *causes stored content to be displayed* on a screen, and execution of a screen saver procedure is terminated and a subscriber’s computer’s display is returned to whatever was being displayed before the screen saver was executed. *See, e.g., Reilly, col. 12, line 57-60, and final rejection, page 7.* For purposes of this Appeal Brief, Applicant refers to “whatever was being displayed before the screen saver was executed,” as disclosed by Reilly, as “previously-displayed-content.”

Applicant submits that pressing an icon (pause key) so as to *cause stored content to be displayed* on a screen does not amount to *pausing* user selected content or *displaying paused user selected program content*, as recited in claims 1 and 20. Indeed, even if it is assumed, for the sake of argument, that pressing the icon (pause key) causes a pause mode to be entered, since pressing the icon (pause key) merely *causes stored content to be displayed* on a screen,

Applicant submits that the First Official Notice, alone or in combination with Reilly, does not reasonably disclose or suggest that the stored content displayed on a screen as a result of pressing of the icon (pause key) amounts to user selected program content that is displayed on the screen while the pause mode is entered.

Furthermore still, although Reilly and the First Official Notice disclose that a display is returned to whatever was displayed *before* the screen saver was executed (e.g., the display is returned to the previously-displayed-content), Applicant submits that Reilly and the First Official Notice do not reasonably teach or suggest that, upon entering a pause mode, the previously-displayed-content is displayed during a time delay greater than zero seconds.

For any or all of these reasons, Applicant submits that the Examiner has not established *prima facie* obviousness of claims 1 and 20, and that claims 1 and 20 should therefore be allowed.

b. The Examiner clearly erred in rejecting claims 22-24 under 35 U.S.C. § 103(a) as being obvious over Reilly and the First Official Notice

As noted above, the Examiner rejected claims 22-24 under 35 U.S.C. § 103(a) as being obvious over Reilly and the First Official Notice. Claims 22-24 are dependent on independent claim 1 and necessarily include all of the limitations of claim 1.

Without conceding any assertions the Examiner made with respect to claims 22-24, Applicant submits that the Examiner clearly erred in rejecting claims 22-24 as being obvious over Reilly and the First Official Notice for at least the same reason that the Examiner clearly erred in rejecting independent claim 1 as being obvious over Reilly and the First Official Notice, for the reasons discussed above.

c. The Examiner clearly erred in rejecting claims 25 and 28 under 35 U.S.C. § 103(a) as being obvious over Reilly and the Second Official Notice

As noted above, the Examiner rejected claims 25 and 28 under 35 U.S.C. § 103(a) as being obvious over Reilly and the Second Official Notice. Claims 25 and 28 are dependent on independent claim 1 and necessarily include all of the limitations of claim 1.

Without conceding any assertions the Examiner made with respect to claims 25 and 28, Applicant submits that the Second Official Notice fails to make up for the deficiency of Reilly and the First Official Notice, and that the Examiner clearly erred in rejecting claims 25 and 28 as being obvious over Reilly and the Second Official Notice for at least the same reason that the Examiner clearly erred in rejecting independent claim 1 as being obvious over Reilly and the First Official Notice, for the reasons discussed above.

d. The Examiner clearly erred in rejecting claims 26 and 27 as being obvious over Reilly and the Third Official Notice

As noted above, the Examiner rejected claims 26 and 27 under 35 U.S.C. § 103(a) as being obvious over Reilly and the Third Official Notice. Claims 26 and 27 are dependent on independent claim 1 and necessarily include all of the limitations of claim 1.

Without conceding any assertions the Examiner made with respect to claims 26 and 27, Applicant submits that the Third Official Notice fails to make up for the deficiency of Reilly and the First Official Notice, and that the Examiner clearly erred in rejecting claims 26 and 27 as being obvious over Reilly and the Third Official Notice for at least the same reason that the Examiner clearly erred in rejecting independent claim 1 as being obvious over Reilly and the First Official Notice, for the reasons discussed above.

e. The Examiner clearly erred in rejecting claims 2, 5-11 and 13-18 as being obvious over Reilly

As noted above, the Examiner rejected claims 2, 5-11 and 13-18 under 35 U.S.C. § 103(a) as being obvious over Reilly. These dependent claims are dependent on claim 1 and necessarily include all of the limitations of claim 1.

Without conceding any assertions the Examiner made with respect to claims 2, 5-11, and 13-18, Applicant submits that the Examiner clearly erred in rejecting claims 2, 5-11, and 13-18 as being obvious over Reilly for at least the same reason that the Examiner clearly erred in rejecting independent claim 1 as being obvious over Reilly and the First Official Notice, for the reasons discussed above.

f. Conclusion

Applicant has demonstrated that the rejections of claims 1, 2, 5-11, 13-18, 20, and 22-28 are in error as a matter of law. Applicant therefore requests reversal of the rejections and allowance of the claims.

Respectfully submitted,

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Date: January 15, 2009

By: /David L. Ciesielski/
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Claims Appendix

1. (Previously presented) A method of displaying an ad on a video replay system, the method comprising:

on a display of the video replay system, displaying user selected program content stored at a storage medium of the video replay system;

while the user selected program content is being displayed on the display of the video replay system, entering a pause mode in response to a user action that comprises pressing a pause key;

obtaining an ad; and

upon entering the pause mode, pausing the user selected program content and displaying the paused user selected program content on the display of the video replay system during a time delay greater than zero seconds; and

after the time delay has elapsed, displaying the ad on the display of the video replay system.

2. (Previously presented) The method of claim 1, further comprising:
allowing a user to set the time delay.

3-4. (Cancelled)

5. (Original) The method of claim 1, wherein the ad is a commercial ad.

6. (Original) The method of claim 1, wherein the ad is a user-selected picture.
7. (Original) The method of claim 1, wherein the ad is a user-selected still photograph.
8. (Original) The method of claim 1, wherein the ad is a user-selected video clip.
9. (Original) The method of claim 1, wherein the ad is a still commercial ad.
10. (Original) The method of claim 1, wherein the ad is a commercial ad containing a video clip.
11. (Original) The method of claim 1, wherein the ad is a video animation.
12. (Cancelled)
13. (Original) The method of claim 1, wherein the ad is obtained from an ad placement engine.
14. (Original) The method of claim 1, wherein the ad is obtained from external storage.

15. (Previously presented) The method of claim 1, wherein the ad is downloaded from a computer connected to the video replay system.

16. (Previously presented) The method of claim 1, further comprising displaying a pause banner during the pause mode.

17. (Original) The method of claim 1, wherein the ad is a full-page ad.

18. (Original) The method of claim 1, wherein the ad occupies less than all of the display.

19. (Cancelled)

20. (Previously presented) A computer program product, having computer instructions stored thereon to cause a video replay system to perform a method comprising:

on a display of the video replay system, displaying user selected program content stored at a storage medium of the video replay system;

while the user selected program content is being displayed on the display of the video replay system, entering a pause mode in response to a user action that comprises pressing a pause key;

obtaining an ad; and

upon entering the pause mode, pausing the user selected program content and displaying the paused user selected program content on the display of the video replay system during a time delay greater than zero seconds; and

after the time delay has elapsed, displaying the ad on the display of the video replay system.

21. (Cancelled)

22. (Previously presented) The method of claim 1, wherein the pause key is on the video replay system.

23. (Previously presented) The method of claim 1, wherein the pause key is on the display of the video replay system.

24. (Previously presented) The method of claim 1, wherein the pause key is on a remote control.

25. (Previously presented) The method of claim 1, wherein the video replay system is a handheld video player.

26. (Previously presented) The method of claim 1, wherein the user selected program content comprises a selected television program, the method further comprising:

prior to displaying the user selected program content:

(i) receiving the selected television program content at the video replay system; and

(ii) storing the selected television program content at the storage medium of the video replay system

27. (Previously presented) The method of claim 1, wherein the display of the video replay system comprises a television set.

28. (Previously presented) The method of claim 1, wherein the display of the video replay system comprises a cellular device.

Evidence Appendix

This appendix is empty.

Related proceedings appendix

This appendix is empty.